

1 ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

2 DEPARTMENT OF PUBLIC PROTECTION

3 OFFICE OF INSURANCE

4 DIVISION OF PROPERTY & CASUALTY

5 (New Administrative Regulation)

6 806 KAR 10:050 Surplus Lines Affidavits.

7 RELATES TO: KRS 304.1-070, KRS 304.10-030, KRS 304.10-040, 2004 Ky. Acts ch.
8 157, sec. 5, KRS 304.10-160, KRS 304.10-070

9 STATUTORY AUTHORITY: KRS 340.2-110, 2004 Ky. Acts ch. 157, sec. 5 and KRS
10 304.10-210.

11 NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 2004-031, filed
12 January 6, 2004, abolished the Department of Insurance and transferred all its “duties, functions,
13 responsibilities, records, equipment, staff and support budgets” to the Office of Insurance. KRS
14 304.2-110 provides that the commissioner of insurance may make reasonable rules and
15 regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code, as
16 defined in KRS 304.1-010. 2004 Ky. Acts ch. 157, sec. 5 provides that the commissioner of
17 insurance may prescribe the affidavit form and manner and form of filing the surplus lines broker
18 affidavit of eligibility for export. KRS 304.10-210 provides that the commissioner of insurance
19 may make reasonable rules and regulations to effectuate the surplus lines law. This

1 administrative regulation sets forth the manner and form for surplus line brokers to furnish to the
2 Office of Insurance, evidence of eligibility for export required by 2004 Ky. Acts ch. 157, sec. 5.

3 Section 1. Time Period for Filing. An affidavit of eligibility for export shall be filed by
4 the licensed surplus line broker with the Office of Insurance within 60 days after each premium
5 bearing surplus lines transaction with a foreign insurer. The affidavit shall be filed within 90
6 days after each premium bearing surplus lines transaction with an alien insurer.

7 Section 2. Methods of Filing. Affidavits shall be filed by mail or electronically.

8 (1) Mail. A Surplus lines Affidavit, KY S.L. Form 1 (Rev. 06/04), shall be completed and
9 mailed to the Office of Insurance. It shall be accompanied by a copy of the declaration page,
10 endorsement, or audit of the policy. The policy document shall detail premiums, assessments,
11 fees, charges or other consideration deemed part of the premium, surplus lines tax, premium
12 surcharge and local government premium tax. If the declaration page is not available to make a
13 timely filing of the affidavit, a copy of the binder showing the above details of the placement
14 shall be submitted.

15 (2) Electronically. A Surplus Lines Affidavit shall be completed via eServices via the
16 Office of Insurance website, <http://doi.ppr.ky.gov/kentucky/>, or via File Transfer Protocol (FTP)
17 submission.

18 (3) The broker shall maintain records of each transaction, including evidence of efforts to
19 place insurance with insurers authorized to transact and actually writing insurance in this state,
20 which shall be subject to examination by the Office of Insurance pursuant to KRS 304.10-160.

21 (4) All affidavits, however submitted, shall be complete. Incomplete affidavits will not be
22 accepted by the Department and will be returned for correction and resubmission within the
23 timeframes in Section 1.

1 Section 3. Incorporated by Reference: (1) “Surplus Lines Affidavit, KY S.L. Form 1
2 (Rev. 06/04)” is incorporated by reference.

3 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
4 law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky, 40601,
5 Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the Office of
6 Insurance internet website at <http://doi.ppr.ky.gov/kentucky/>.

APPROVED:

Glenn Jennings, Acting Executive Director
Kentucky Office of Insurance

Date

James Adams, Commissioner
Department of Public Protection

Date

LaJuana S. Wilcher, Secretary
Environmental and Public Protection Cabinet

Date

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 23, 2004, at 9:00 am the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2004, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 2, 2004. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Melea Kelch
Kentucky Office of Insurance
215 West Main Street
P.O. Box 517
Frankfort, KY 40602-0517
Phone: 502-564-6032
Fax: 502-564-1456

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 806 KAR 10:050

Contact Person: Melea Kelch

(1) Provide a brief summary of:

What this administrative regulation does:

- (a) This administrative regulation replaces 806 KAR 10:020. It provides the method for filing surplus lines affidavits and permits electronic filing or traditional filing by regular mail.
- (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with 2004 Ky. Acts ch. 157, sec. 5.
- (c) How does this administrative regulation conform to the content of the authorizing statutes: 2004 Ky. Acts ch. 157, sec. 5 states that a broker must file an affidavit with the commissioner “in the manner and form as prescribed by the commissioner through administrative regulation.” This administrative regulation establishes the manner, time, and form within which the broker must file.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist surplus lines brokers by expanding the manner and form for filing affidavits required by the Kentucky Insurance Code to include electronic options. By receiving accepting electronic data, the Office of Insurance will be much more efficient, and will be able to eliminate individual data entry of 15,000 affidavits per year. This will allow time to be reallocated to addressing issues of noncompliance.

- (e) If this is an amendment to an existing administrative regulation, provide a brief summary of:
- (a) How the amendment will change this existing administrative regulation? This is not an amendment.
 - (b) The necessity of the amendment to this administrative regulation: N/A
 - (c) How the amendment conforms to the content of the authorizing statutes: N/A
 - (d) How the amendment will assist in the effective administration of the statutes: N/A
- (2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all surplus lines brokers who are required to file an affidavit with the Office of Insurance pursuant to 2004 Ky. Acts Ch. 157, sec. 5. Currently, there are approximately 430 licensed surplus lines brokers.
- (3) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: These brokers have been required to file an affidavit with the commissioner since approximately 1950. 806 KAR 10:020 provided the form and manner for these affidavits. This new regulation allows brokers the option to file electronically or to continue to file by regular mail. Electronic filing can provide for increased efficiencies in their operations.
- (4) Provide an estimate of how much it will cost to implement this regulation:
- (a) Initially: No increase in the Office of Insurance's budget is anticipated.
 - (b) On a continuing basis. There should be no additional cost on a continuing basis.

- (5) What is the source of funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Kentucky Office of Insurance.
- (6) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding should be necessary.
- (7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees.
- (8) TIERING: Is tiering applied? This administrative regulation does affect all surplus lines brokers, but the regulation allows these brokers to chose which method of filing is more convenient for their business.

DETAILED SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

806 KAR 10:050

Surplus Lines Affidavits

(1) 806 KAR 10:050 incorporates by reference, “Surplus Lines Affidavit, KY S.L. Form 1 (Rev. 06/04), ” which is the form that Surplus Lines Brokers shall file with the Office of Insurance instead using e-services or FTP. This form will collect general information; surplus lines tax computation; and ask for a broker verification. The same fields of information are collected with either method of electronic filing.

(2) The total number of pages that the Office of Insurance has incorporated by reference is one (1).